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(Rev. 8/83)

United States Bankruptcy Court

For the NORTHERN District of IOWA

IN RE:

RICK EASTON and
MERRILEE EASTON,

Debtors.

Chapter 12

Case No. L-90-00497S

JUDGMENT

☒ This proceeding having come on for trial or hearing before the court, the Honorable Michael J. Melloy, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

[OR]

☐ The issues of this proceeding having been duly considered by the Honorable Michael J. Melloy, United States Bankruptcy Judge, and a decision having been reached without trial or hearing.

IT IS ORDERED AND ADJUDGED: that the motion of Otoe County National Bank to impose sanctions pursuant to Bankruptcy Rule 9011 is granted. A total sanction of $1,218.00 is awarded to the Bank. The sanction is apportioned $800 against attorney John Harmelink, and $418.00 against Rick and Merrilee Easton.

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BARBARA A. EVERLY,
Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]

Date of issuance: August 28, 1990

By: Virginia Clark
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:

RICK EASTON and
MERRILEE EASTON,

Debtors.

Chapter 12
BANKRUPTCY NO.

L-90-00497S

Ruling Re: Bankruptcy Rule 9011 Sanctions

The matter before the Court is the motion of Otoe County National Bank ("Bank") to impose Bankruptcy Rule 9011 sanctions against the Debtors and Debtors' attorney. The Court conducted a hearing on this matter on April 20, 1990. The parties were given an opportunity to file post-hearing briefs. Those briefs have now been filed and the matter is fully submitted. The following constitutes the Court's findings of fact, conclusions of law and order pursuant to Bankruptcy Rule 7052.

Background and Findings of Fact

1. This is the third bankruptcy petition filed by these Debtors in the past several years. On August 16, 1985, Rick and Merrilee Easton ("Eastons") filed a Chapter 13 petition. During the course of the administration of the Chapter 13 case, the Bank obtained relief from the automatic stay. The Chapter 13 case was eventually dismissed. The Eastons then filed a Chapter 12 case on February 13, 1987, No. L-87-00344S (first chapter 12).

2. The nature of the indebtedness owed by the Eastons to the Bank has been described in considerable detail in two opinions issued by the Eighth Circuit Court of Appeals. In re Rick L.

Easton and Merrilee Easton, 882 F.2d 312 (8th Cir. 1989) and In re George Roger Easton and Elsie M. Easton, 883 F.2d 630 (8th Cir. 1989). For purposes of those opinions, it is sufficient to note that Rick Easton had acquired a two acre parcel of real estate from his grandparents. He constructed a hog confinement facility on that two acre parcel. The construction costs of the hog confinement facility were financed by the Bank. To a large extent the first Chapter 12 dealt with issues relating to valuation of the Bank's collateral and treatment of the Bank debt.

3. The litigation between the Bank and the Eastons in the first Chapter 12 was acrimonious, lengthy, and bitter. The Bank obtained relief from the automatic stay based upon a prior finding in the Chapter 13 case that the stay should be lifted. After lengthy hearings on valuation, feasibility, and other confirmation issues, the Eastons eventually obtained confirmation of a Chapter 12 plan. However, subsequent to the confirmation hearing but prior to the entry of the formal written confirmation order, the Bank sold the hog confinement facility at a sheriff's sale. This Court eventually set aside that sale and found that the Bank had acted in bad faith. That decision was appealed to the Eighth Circuit Court of Appeals which affirmed in the case of In re Rick and Merrilee Easton, 882 F.2d 312 (8th Cir. 1989).

4. The Eastons eventually defaulted on their plan. As a consequence, the Bank filed a motion to dismiss the first Chapter 12 on November 9, 1989. On December 6, 1989, the Eastons filed a response to the motion to dismiss, in which they alleged any

default was not of a material nature and that the case should not be dismissed. The motion to dismiss came on for hearing before the Court on January 9, 1990. At that hearing, the attorney for the Debtors advised the Court that the resistance to the motion to dismiss was being withdrawn and the Eastons were consenting to the Court entering an order of dismissal. On January 24, 1990, an order was entered dismissing the Eastons first Chapter 12.

5. The present Chapter 12 case was filed on March 21, 1990. On the same date, the Bank filed a motion for relief from stay in which it alleged that a sheriff's sale of the two acre parcel upon which the hog confinement facility had been built was scheduled for the following Tuesday, March 27, 1990. The Court set an expedited hearing on the motion for relief from stay for March 22, 1990.

6. At the hearing on the motion for relief from stay, evidence and testimony were presented which showed the following facts.

a. Rick Easton owned the two acre parcel upon which the hog confinement facility was built. The Bank obtained a judgment and was proceeding to execute upon that judgment by selling the two acre hog confinement facility at a sheriff's sale. That judgment was entered against Rick and Merrilee Easton on July 31, 1987.

b. The Eastons lived in a mobile home immediately adjacent to the two acre parcel of real estate. The property which surrounded the two acre parcel was owned by Rick Easton's grandmother, Elsie Easton. Elsie Easton executed a quit claim deed on February 15, 1990, conveying the one-half acre parcel of real estate upon which the Rick and Merrilee Easton's mobile home was situated to Rick & Merrilee Easton. The one-half acre was immediately adjacent to the two acre parcel upon which the hog confinement facility was constructed.

c. Rick and Merrilee Easton were attempting to claim the entire two and one-half acre parcel, that is, the two acre parcel upon which the hog confinement facility was constructed

and the one-half acre upon which their mobile home was situated, as their homestead. They were arguing that since they had not executed any waiver of homestead as required by § 561.21, 1989 Code of Iowa, the Bank could not sell the homestead to satisfy the debt owed by the Eastons to the Bank.

d. The issue of whether the Eastons could claim the two and one-half acres as a homestead was before the Iowa District Court at the time this Chapter 12 was filed. The Eastons had made the same homestead claim in the Iowa District Court proceedings. A hearing had been held before the Iowa District Court on March 12, 1990. The judge had ordered the parties to submit briefs and arguments on their respective positions by March 19, 1990. In lieu of filing a brief in the Iowa District Court, the Debtors filed this case on March 21, 1990.

e. The attorney for the Eastons argued at the hearing on the motion for relief from stay that he wanted the "federal court" to decide the homestead issue as opposed to the Iowa state court where the issue was currently pending. He wanted the opportunity to appeal any adverse ruling to the Eighth Circuit Court of Appeals as opposed to the Iowa Supreme Court. This is in spite of the fact that the issue before the court involved interpretation of the Iowa homestead statute.

7. At the conclusion of the hearing on March 22, 1990, the Court entered an order granting the motion for relief from stay. The Court found that the petition was filed in bad faith with the sole intent to hinder and frustrate the legitimate claims of the Bank. The Debtors clearly had an appropriate forum to litigate the issue they believed needed to be litigated, that is, the validity of their homestead claim. It was also noted that while this Court was not deciding the issue of the validity of the homestead claim, that it was unlikely the Debtors would prevail in light of the clear statutory language found at Iowa Code § 561.7 (1989). See also Chariton Feed and Grain, Inc. v. Kinser, 794 F.2d 1329 (8th Cir. 1986).

8. An order was subsequently entered by the Honorable Terry L. Huitink, Judge of the Third Judicial District of Iowa, finding

that the Debtors' claim of a homestead exemption as to the two acre parcel was invalid. The Court relied upon Iowa Code § 561.7, which provides that an owner may change the limits of the homestead, however, the change shall not prejudice "conveyances or liens made or created previously thereto."

Discussion and Conclusions of Law

Bankruptcy Rule 9011 provides as follows:

> (a) Signature. Every petition, pleading, motion and other paper served or filed in a case under the Code on behalf of a party represented by an attorney, except a list, schedule, statement of financial affairs, statement of executory contracts, statement of intention, Chapter 13 Statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name, whose office address and telephone number shall be stated. A party who is not represented by an attorney shall sign all papers and state the party's address and telephone number. The signature of an attorney or a party constitutes a certificate of that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, to cause delay, or to increase the cost of litigation. If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person whose signature is required. If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

This Court previously discussed Bankruptcy Rule 9011 in the context of a bad faith filing in the case of In re Cedar Falls

Hotel Properties, Ltd. Partnership, 102 B.R. 1009 (Bankr. N.D. Iowa 1989). That case holds that a bad faith filing may warrant imposition of sanctions under Bankruptcy Rule 9011. Cedar Falls Hotel Properties, 102 B.R. at 1016-1018. The imposition of sanctions is proper in the present case since the Court finds that it is a bad faith filing done for the improper motive of hindering and delaying the Bank.

The Debtors and their counsel argue in defense that the Debtors' conduct and the conduct of their attorney should be excused for the reason that the Bank has also exhibited bad faith in dealing with the Eastons. Specifically, the Eastons point to the Court's finding of bad faith in connection with the sale of the hog confinement facility after the confirmation hearing in 1987. The Eastons emphasize that the finding of bad faith was affirmed by the Eight Circuit Court of Appeals. The Eastons argument might be characterized as the "tit for tat defense."

It should first be noted while there was a finding of bad faith as to the Bank, there has been no finding that the Bank violated Bankruptcy Rule 9011. Even if a Bankruptcy Rule 9011 violation had been found, no authority has been cited to support the proposition that such a violation would have excused the Eastons failure to comply with Rule 9011.

In summary, the Court finds that the filing of the most recent Chapter 12 case did constitute a violation of Bankruptcy Rule 9011. The Bank asks that its expenses in bringing and prosecuting the motion for relief from stay be assessed with appropriate sanction

in this case. The evidence shows that the total fees expended in connection with the motion for relief from stay were $1,128 plus costs of $90, for a total of $1,218. As stated in the Cedar Falls Hotel Properties case, the Court has considerable discretion in fashioning an appropriate sanction. 102 B.R. at 1018-1019. In that case, the court assessed fees and expenses of $2,500 against a principle of the debtor and reprimanded debtor's attorneys.

In this case, the Court believes the imposition of a sanction equal to the full amount of the fees and expenses incurred by the Bank is appropriate. This is a flagrant case of a bad faith filing. Debtors' counsel is an experienced bankruptcy practitioner who prides himself on having handled hundreds of farm chapter 11 and chapter 12 cases. Debtors' attorney should have known better in this case. For that reason, the Court believes that the largest share of the sanction should fall upon the shoulders of Debtors' counsel.

The Bank will be awarded a sanction equal to its fees and expenses totalling $1,218, which sum the Court finds to be reasonable. The sanction will be apportioned $800 against John Harmelink, attorney for Debtors, and $418 against Rick and Merrilee Easton, individually.

ORDER

IT IS THEREFORE ORDERED that the motion of Otoe County National Bank to impose sanctions pursuant to Bankruptcy Rule 9011 is granted. A total sanction of $1,218.00 is awarded to the Bank. The sanction is apportioned $800 against attorney John Harmelink, and $418.00 against Rick and Merrilee Easton.

DONE AND ORDERED this 28 day of August, 1990.

MICHAEL J. MELLOY
Chief Bankruptcy Judge

Copies to:
John Harmelink,
Atty for Debtors;
Debtors,
Rick & Merrilee Easton;
Karen McCarthy,
Atty for Otoe County
National Bank;
U.S. Trustee;
this August 28, 1990
Deputy Clerk, U.S. Bankruptcy Court
P.O. Box 74890
Cedar Rapids, Iowa 52407

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

IN RE:	:	CHAPTER 12
RICK L. EASTON and MERRILEE EASTON,	:	BANKRUPTCY NO. L-90-00497S
Debtors.	:	SATISFACTION OF JUDGMENT

COMES NOW Otoe County National Bank and satisfies the judgment entered against Rick L. Easton, Merrilee Easton and John Harmelink on August 28, 1990.

OTOE COUNTY NATIONAL BANK

By: Carl Brady
Carl Brady

BERENSTEIN, VRIEZELAAR, MOORE, MOSER & TIGGES

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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:	Chapter 11 BANKRUPTCY NO.
ELDON A. GRAVEL and LORRAINE H. GRAVEL, Debtor.	L-89-01068D
MONTICELLO STATE BANK, Plaintiff, v. ELDON L. GRAVEL, LORRAINE N. GRAVEL, AMERICAN REALTY OF DUBUQUE, INC., and IVAN KURT AUCTION & REALTY, Defendants.	ADVERSARY NO. L-90-0077D

Ruling Re: Realtors Commission

The issue before the Court is whether two realty firms, American Realty of Dubuque, Inc., and Ivan Kurt Auction & Realty ("Realtors") are entitled to a commission for services rendered to the Debtors in this case. For the reasons stated below, the Court finds that the Realtors are entitled to a commission in the amount set forth below.

Findings of Fact

1. The Debtors in this case filed a Chapter 11 proceeding on July 20, 1989. The Debtors eventually decided that as part of a plan of reorganization they would sell substantially all of their farm real estate.

2. A hearing in this case was held on February 9, 1990. At that hearing, the Court was advised that the Debtors planned to

attempt to sell substantially all of their farm real estate and file a liquidating plan. The Court entered an order which required the Debtors to file an amended plan and disclosure statement by no later than March 1, 1990.

3. At the hearing on February 9, 1990, the Court was advised that the Debtors had entered into two listing agreements with the Realtors. The Debtors' attorney requested the Court to approve the listing agreements with Ivan Kurt Auction & Realty and American Realty of Dubuque. The Court conducted a discussion with Debtors personally and Debtors' counsel on the record. At the conclusion of that discussion, the Court entered an order approving the listing agreements between the Debtors and Realtors. That order was reduced to a written order which was filed February 13, 1990.

4. Both listing agreements were prepared on an Iowa Association Realtors form entitled "Farm and Land Exclusive Right to Sell." The relevant provisions of each agreement which are at issue in this case are as follows:

a. Each agreement gave to the Realtor the exclusive right to sell 200 acres of Debtors' property.

b. The sales price in each agreement was $340,000.

c. Each agreement provided for a 5% commission on the gross sale price. Each agreement specifically provided at paragraph 6 that the commission is payable if:

> "(2) Owner or anyone else sells, exchanges, leases, rents, or otherwise transfers the property during the period herein at any price or at any terms;"

d. Each listing agreement terminated on April 1, 1990.

e. The listing agreement with Ivan Kurt Auction & Realty reserved George Knepper as a prospect until March 1, 1990. The listing agreement with American Realty of Dubuque reserved George Knepper as a prospect for 10 days from the date of the listing.

f. The Ivan Kurt Auction & Realty listing agreement is dated February 7, 1990. The American Realty of Dubuque listing agreement is dated February 9, 1990. As indicated above, both listing agreements were approved by order of the Court filed February 11, 1990.

5. An agreement to sell the property to George Knepper was signed by the Debtors on March 5, 1990. The gross sales price in that contract is $260,000. It is the understanding of the Court that this sale has now closed and the net sales price, after payment of the first mortgage to Monticello State Bank, has been escrowed pending a resolution of this dispute.

6. The Realtors are requesting that they be paid a 5% commission on the $260,000 gross sales price. Although Debtors granted each Realtor an exclusive right to sell the property and each agreement provided for a 5% commission, the Realtors have agreed that they are entitled to a total commission of 5% to be split between the two Realtors.

7. The Debtors argue that they entered into a binding agreement with George Knepper prior to the expiration of the period

of reservation for sale to George Knepper in each of the listing agreements. However, the Court finds that based upon the evidence and testimony, the Debtor's testimony lacks credibility and that the Debtors did not enter into an agreement with George Knepper until March 5, 1990, the date the purchase agreement was signed. The Court relies upon the following evidence in making this determination:

a. Mr. Gravel testified that he had a binding agreement with George Knepper around February 13 or 14. This would be within the 10 day exclusivity period of the American Realty of Dubuque listing agreement signed February 9, 1990, and prior to the March 1, 1990 exclusivity date of the Ivan Kurt Auction & Realty listing agreement. However, the evidence shows that Realtors were continuing to show the property even after the February 14 date, and that an offer was presented to the Debtors from Allan and Kathleen White on February 22, 1990. The Debtors countered that offer with a proposal of $310,000 shortly thereafter. Clearly, the Debtors did not believe they had a binding agreement with Knepper as of February 22, 1990, when they considered a competing offer from Mr. & Mrs. White and countered that offer.

b. The court file shows that the Debtors filed their amended and substituted disclosure statement on March 1, 1990. That disclosure statement contained the following statement:

> "Debtors intend to sell the farm for $260,000 without a realtor to a Mr. Knepper. They have received an offer of $240,000 from this individual and are presently negotiating with

him. They anticipate a subsequent offer on March 2, 1990.

c. The testimony of Eldon Gravel lacks credibility. It appears to the Court that Mr. Gravel is attempting to manufacture an agreement that did not exist in order to circumvent the express language of the listing agreements. Mr. Gravel is attempting to avoid the effects of an agreement he entered into by asserting that an agreement existed before the date agreed upon.

8. Both realtors had done appraisals on the property for Mr. & Mrs. Gravel in the fall of 1989. Neither realtor was paid for their services. Both Realtors expected that if the property was listed, that they would receive a listing agreement and would receive some compensation for their appraisal services through the sale of the property.

Once the listing agreements were entered into, both Realtors performed services pursuant to the listing agreement. Both Realtors advertised the property and contacted perspective purchasers. Howard McDermott, a realtor with American Realty, testified that he drove some people by the property but did not actually show the property to any prospective purchaser. The realtor, Ivan Kurt, testified that he did show the property to at least one prospective purchaser and did obtain the White offer.

9. When a final agreement was negotiated between Mr. & Mrs. Gravel and George Knepper in early March, 1990, Mr. Gravel contacted realtor Ivan Kurt to prepare the purchase agreement. That contact occurred on March 4, 1990. Mr. Kurt prepared the

agreement which was introduced into evidence as exhibit "B" and which was finally signed by the parties on March 5, 1990. Paragraph 8 to that agreement indicates that the seller agrees to pay a broker's fee "as agreed." The words "as agreed" are typed into the form. Realtor Kurt believes that language indicates that the sellers intended to pay the commission pursuant to the listing agreements. Mr. Gravel did not testify as to his understanding of that language and has indicated that he has made no attempt to negotiate a sales commission with the Realtors. It is the position of Mr. & Mrs. Gravel that the Realtors are not entitled to any commission in connection with the sale of this property.

Conclusions of Law

There is considerable case law in Iowa on the issue of whether a realtor who has an exclusive sales contract may be entitled to a commission for sale of the property even if the realtor is not the agent who procured the sale. While those cases indicate that an exclusive listing agreement will be strictly construed against the realtor, the agreement will be honored if it provides by clear and unequivocal language that the realtor is entitled to a commission even if the property is sold by the owner. Stromberg v. Crowl, 132 N.W.2d 462, 464 (Iowa 1965).

The Iowa courts have also recognized the principle that a realtor is entitled to a commission, even if property is sold by the owner, if the realtor performs valuable services which assist in the sale of the property. In Matter of Estate of Bruene, 350

N.W.2d 209 (Iowa Ct. App. 1984), the court found that a realtor was entitled to a commission because the realtor devoted time and effort in selling the property, including, efforts to advertise the real estate, the broker's participation in closing the ultimate sale by the owner, the broker's efforts in establishing the market price, and the broker's aid to the owner throughout the sale process. 350 N.W.2d at 215.

In a bankruptcy proceeding realtors are considered professionals for purposes of appointment and compensation. See In re McConnell, 82 B.R. 43 (Bankr. S.D. Tex. 1987). As professionals, the court has a responsibility to pass upon the contract of employment and to consider and decide the proper amount of compensation to be paid to professionals upon completion of the services. See 11 U.S.C. §§ 327, 330.

The task before the Court in this case is to determine whether the Realtors are entitled to a fee as a professional person, and if so, the amount of the fee. The Court has no trouble with the first part of that question. Clearly, a binding contract was entered into between the Debtors and the Realtors and that contract was approved by the Court. The Realtors performed services pursuant to the contract for which they should be compensated.

The Debtors efforts to try to avoid the effects of a contract they freely entered into cannot be condoned. The Debtors were the ones who requested the Court to approve the contracts at the February 9, 1990 hearing. The Debtors cannot now try to avoid the effects of a contract they freely entered into.

The Court does have somewhat more trouble with the issue of how much of a commission should be paid to the Realtors. On the one hand it certainly can be argued that the contract provides for a 5% commission and that the commission arrangement should be honored. However, it also should be noted that while the Realtors did perform valuable services, the services were fairly minimal in this case. The Realtors also were aware of the possibility that Debtors would sell the property to George Knepper within the exclusivity period and that no fee would be paid at all. The Court has some hesitancy about approving a fee of $13,000 (5% of $260,000) given the relatively small amount of work testified to by the Realtors. The Court does have the authority to consider the amount of commission to be paid to a realtor after the sale is completed and the parties have had an opportunity to present evidence and testimony about the services rendered. In re Clapp, 36 B.R. 768 (Bankr. D. Haw. 1984).

The Court has carefully considered this matter and believes an equitable solution would be to award each of the Realtors a fee equal to 1/3 of the 5% commission. In reaching this conclusion, the Court took into consideration the fact that the Debtors were actually the ones who procured the sale. In essence, the Debtor is receiving 1/3 of the 5% commission with each of the Realtors to receive 1/3 of the commission. This results in a commission payable to each of the Realtors in the sum of $4,333.33.